IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE M.H.S. ANSARI

AND
THE HON'BLE SRI JUSTICE T.Ch.SURYA RAO

WRIT PETITION No.2980 of 2002

Between:

M/s.Sterlite Industries (India) Limited,

A Company incorporated under the provisions of Companies
Act, 1956, having its office at Atur Chambers,

2A,Moledina Road, Pune,
represented by Deputy General Manager (Corporate Affairs), Mr.Umesh Mehta,
aged-43 yrs, S/o. Sri Manilal Mehta.

..... PETITIONER

AND

1.Transmission Corporation of Andhra Pradesh Limited,

represented by its Chairman-cum-Managing Director,
Vidyut Soudha, Hyderabad.
2. The Government of India, represented by

the Secretary Ministry of Commerce and Industry,
Deparment of Commerce, Udyog Bhavan,
New Delhi.
3.The Govt. of India, represented by the Secretary,

Ministry of Finance, Department of Revenue,
North Block, New Delhi.
4.Central Board of Excise & Customs,

represented by its Chairman,
North Block, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, direction or order especially in the nature of writ of mandamus declaring the three letters dated 11-01-2002 (Annexures P8, P9, and P10) issued by the Respondent No.1 as being contrary to the provisions of Notification No.108/95, dated 28-8-1995 illegal and void and consequently declare and hold that the said duty exemption certificates have been issued validity entitling the petitioner to claim benefit of Notification No.108 of 1995 dated 28-8-1995.

Counsel for the Petitioner: Mr.S.RAVI

Counsel for Respondent No.1: Mr. M.SREERAMULU REDDY,

S.C. FOR A.P.TRANSCO.

Counsel for Respondent Nos.2 to 4: Mr.A.RAJASEKHAR REDDY

(SC FOR CG)

The Court made the following :

ORDER: (per Sri Justice M.H.S.Ansari)

Instant writ petition is filed questioning three letters dated 11-1-2002 being Annexures P8, P9 and P10 issued by respondent No.1 and the prayer is for declaring the same to be illegal and void on the ground that the same are contrary to the provisions of Notification No.108/95, dated 28-8-1995. Consequent relief claimed is for a declaration that the duty exemption certificates (P5, P6 and P7) have been issued validly to the petitioner by respondent No.1 entitling the petitioner to claim the benefit of the exemption in terms of Notification No.108/95, dated 28-8-1995.

The facts, in brief are as under.

First respondent (A.P.TRANSCO) floated an international competitive bid for

procurement of ACSR Moose Conductors for Simhardri Vizag Transmission Systems Project. It is stated that the said project was financed by Japan Bank of International Corporation (JBIC) under loan No.ID-P127. The petitioner being a successful bidder was communicated with award of the contract and orders were placed on it by A.P. TRANSCO on 4-12-2000, 19-1-2001 and 16-3-2001 (vide Annexures P1, P2 and P3).

Annexure P2 is the purchase order with respect to ACSR Moose Conductors wherein the terms and conditions of the supply have been set out. The condition relating to excise duty and deemed export benefits as specified in clauses 2.1.1 and 2.2 being relevant for the purpose of enquiry in the case on hand, are extracted hereunder.

"2.1.1. Excise Duty:

Excise Duty is not payable by APTRANSCO. However this is reimbursable by Government of India as supplementary cash assistance and you should claim the cash assistance directly from Government of India.

2.2. Deemed Export Benefits:

You are solely responsible for obtaining any deemed export benefits which you have considered in your offer. In case of failure to receive any such benefits for any reason including statutory variation or change in the policy of Government of India or JBIC, Japan during performance of the contract, APTRANSCO will not compensate. Refer clause 15.2.A(e) in Section ITD of Volume-I."

Clause 15.2A(e) of the Tender documents referred to in Clause 2.2 reads as under.

"i) Clause 15.2 A(e), ITB, Vol.I of bidding documents:

Bidders offering goods from within the purchaser's country shall consider their bid price taking into account deemed export benefits, if any. The details regarding availability of such benefits may please be obtained from the address given below.

Director General (Foreign Trade),

Government of India,

Udyog Bhavan, NEW DELHI-110001.

The bidder must give all information required for issue of project authority certificate in the form provided in terms of the import – export policy along with his bid. The project authority certificate will be issued on this basis only and no subsequent change will be permitted. Where such project authority certificates are issued by the purchaser, excise duty will not be reimbursed separately.

Bidders are solely responsible for obtaining any deemed export benefits which they have considered in their offer and in case of failure to receive such benefits, on any reason including statutory variation or change in the policy of Government of India or JBIC Japan during the performance of the contract the purchaser will not compensate the bidder. Bids of bidders who do not accept this provision will be declared as non-responsive and rejected.

ii) Cl.No.24.7, ITB, Vol-I of bidding documents Excise Duty:

Excise duty on finished products for supply against aided projects under ICB is reimbursable by Government of India as supplementary cash assistance. It shall not be paid by the purchaser and the supplier should claim the cash assistance directly from Government of India. This may be read with clause No.15.2 of this section."

Although it is the case of the petitioner that it is the first respondent Corporation that issued a certificate dated 4-1-2001 after being satisfied of the requirements of Notification No.108/95, dated 28-8-1995, the case of first respondent is that the petitioner herein requested the respondent by way of letters dated 12-12-2000 and 24-1-2001 to issue excise duty exemption certificates in order to enable the petitioner to supply the material. Be that as it may, the fact is that A.P. TRANSCO issued a certificate being Annexure P5. For the sake of convenience, the certificate is extracted hereunder.

"CERTIFICATE

An order has been placed by this office on M/s.Sterlite Industries (India) Ltd. Poona for supply of ACSR Moose Conductor of size:54/7/3.53mm-1700 Km against package-A of Bid No:SVT/EHVT-3/2000 for an Ex-works value of Rs.25,53,40,000/-.

This is to certify that the said material is intended for use on 400 KV Vizag-Khammam DC Line under Simhadri and Vizag Transmission System Project financed through loan No.ID-P127 by the Japan Bank of International Co-operation Fund (JBIC, formerly OECF: Overseas Economic Cooperation Fund), Japan and is approved by the Government of India for implementation by the Govt. of Andhra Pradesh.

The certificate is being issued in pursuance of the requirement under Govt. of India (Ministry of Finance, Department of Revenue) notification No.108/95, dt.28-08-1995 amended vide Notification No:7/98-C.E., dt.02-06-1998, No.33/98, dt.13-10-1998 and 4/99-C.E. dt.11-02-1999 for exemption of Central Excise duty or additional excise duty on the goods covered by the above referred contract."

Similar certificates were issued by A.P.TRANSCO with respect to second and third purchase orders. Copies of such certificates have been filed as Annexures P6 and P7.

The petitioner, on the strength of the certificates issued by A.P.TRANSCO claimed exemption from excise duty and it is the case of the petitioner that the Department of Central Excise after being satisfied of the fulfilment of the conditions in the Exemption Notification No.108/95 had acted upon such certificates and granted relief vide their letters dated 8-1-2001 and 14-3-2001 (filed with the additional affidavit affirmed by the petitioner). It is to be noticed that in his letter dated 8-10-2001, the Deputy Commissioner, Central Excise, Division III stated that the permission is granted in view of the certificate given by the Executive Head of the project implementing authority and counter-signed by the Secretary. It was also clarified that the said permission is subject to the condition that the petitioner will give undertaking to Range Superintendent that the petitioner will produce certificate issued by the competent authority to the effect of supply made to the project. The contention of the learned Standing Counsel for Central Government is that the clearance was under self removal scheme under Rule 173 of the Central Excise Rules and there is no bar to collect excise duty in terms of the provisions relating to assessment of duty and where there is shortfall in payment of duty, power is available to the statutory authority to collect the same and accordingly show cause notice was issued. The grievance of the petitioner is with respect to the impugned letters dated 11-1-2002 identically worded being Annexures P8, P9 and P10. By the impugned letters issued by A.P. TRNSCO certificates (P5, P6 and P7) issued to the petitioner have been cancelled. Therein a statement has also been made that the petitioner is requested to pay required excise duty to the concerned department and seek reimbursement at a later date from Directorate General of Foreign Trade as per rules in vogue.

It must also be noticed, as contended on behalf of the petitioner, that the impugned notices of cancellation have been issued as stated therein as per the intimation received from the Excise Department, Govt. of India that JBIC is not notified as an international organisation. The grievance/complaint of the petitioner is that notice and summons had been issued to the petitioner by the Excise authorities including a summons under Section 14 of the Central Excise Act on the allegation that enquiry against the petitioner is taken up on the evasion of central excise duty/contravention of provisions of Central Excise Act and rules made thereunder. It was contended that the respondents including the Central Excise authorities were fully aware of all facts both as regards the requirements of the Exemption Notification No.108 of 1995 and

also the exemption certificates issued by A.P. TRANSCO, and if in their view JBIC is not a notified organisation under the United Nations (Privileges and Immunities) Act, 1947, it required no detailed enquiry as was purported to be done treating the case to be one of contravention of the provisions of the Excise Act and issuing of summons. Various other contentions have also been raised assailing the impugned orders of cancellation of the exemption certificates, reference to which would be made at appropriate stage.

As certificates were issued purportedly under para (c) (ii) of the Exemption Notification No.108/95 by the A.P. TRANSCO, the question that would arise for consideration is whether the petitioner is eligible for exemption from excise duty in terms of the said Notification No.108 of 1995. The answer to that question is dependant upon the construction to be placed upon Notification No.108/95 and fulfilment of the conditions specified therein. A further question that would require consideration is whether A.P. TRANSCO is authorized/empowered to issue the certificates, which it did and which were subsequently cancelled by it. The validity of the action of A.P. TRANSCO in cancelling the certificates is thus dependent upon the answers to the said questions.

It would be appropriate at this juncture to extract the relevant portion of the Exemption Notification No.108/95, dated 28-8-1995.

"Exemption to goods supplied to UN or an International Organisation – In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise and Salt Act, 1944 (1 of 1944), read with sub-section (3) of Sec5tion 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under the Schedule to the Central Excise and Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the said goods) when supplied to the United Nations or an international organisation for their official use or supplied to the projects financed by the said United Nations or an international organisation and approved by the Government of India, from the whole of -

i. the duty of excise leviable thereon under Section 3 of the Central Excise Act, 1944 (1 of 1944); and

ii. the additional duty of excise leviable thereon under sub- section (1) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

Provided that before clearance of the said goods, the manufacturer products before the Assistant Commissioner of Central Excise having jurisdiction over his factory,-

(a)xxxxx

(b)xxxx

(c) in case the said goods are intended to be supplied to a project financed (whether by a loan or a grant) by the World Bank, the Asian Development Bank or any international organisation other than those listed in the Annexure, and

i. if the said project has been approved by the Government of India, a certificate from the executive head of the Project Implementing Authority and countersigned by an officer not below the rank of a Joint Secretary to the Government of India, in the concerned Line Ministry in the Government of India, that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India, and

ii. if the said project has been approved by the Government of India for implementation by the Government of a State or a Union Territory, a certificate from the executive head of the Project Implementing Authority and countersigned by the Principal Secretary or the Secretary (Finance), as the case may be, in the concerned State Government or the Union Territory, that the said goods are required for the execution of the said project, and that the said project has been duly approved by the Government of India for implementation by the concerned State Government.

Explanation:- For the purposes of this notification –

a. “international organisation” means an international organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947, that the provisions of the Schedule to the said Act shall apply;

b. “Line Ministry” means a Ministry in the Government of India, which has been so nominated with respect to a project, by the Government of India, in the Ministry of Finance (Department of Economic Affairs).”

A plain reading of the above exemption notification would show that it has been issued by the Central Government in exercise of the powers conferred on it by sub-section (1) of Section 5A of the Central Excise and Salt Act, 1944. Such power has been delegated to the Central Government under Section 5A of the Central Excise Act. Neither the legality nor validity of the notification is in question nor the conditions stipulated therein are in issue. On the contrary, reliance has been placed upon clause (c) extracted supra in the notification for justifying the issue of the certificates, which by the impugned orders have been subsequently cancelled. It is the validity of the cancellation orders that is in question in the instant proceedings. It is by now well settled that conditions prescribed for grant of exemption are mandatory for availing of the exemption, and Courts in exercise of power under Article 226 of the Constitution cannot direct the grant of exemption overlooking the conditions specified therein (See **State of Jharkhand v. Ambay Cements**). Exemption provisions have to be strictly construed and before any claim based thereon is granted, it should be established that the conditions prescribed therefor in

the exemption provisions are satisfied. In the case on hand, the condition precedent has not been satisfied namely that the goods in question are intended to be supplied to a project financed by an international organization which has been so declared in pursuance of Section 3 of Act 46 of 1947. Admittedly, JBIC is not one such organization declared under the provisions of Section 3 of Act 46 of 1947. Once the essential condition of Notification No.108 of 1995, as above, is not satisfied, the issuance of certificate by the implementing authority would be of no avail. It is only in the case where goods are supplied to a project financed by a recognised international organization and the project has been approved by the Govt. of India for implementation by the State, a certificate issued in terms of para c (ii) would be required for availing of the exemption from payment of excise duty. For granting such a certificate, the implementing authority has to look to the conditions set out in the notification and nowhere else. What is postulated in para (c) (ii) of the Exemption Notification is a certificate in terms of the conditions prescribed in para c of the Notification. There is no warrant for assuming that the Notification envisages conditions for the issue of the certificate other than those specified by itself. There is nothing in the language of the notification to suggest that a certificate can be issued by the implementing authority either to declare an organisation as international organisation or to treat JBIC as a declared international organisation. The conditions for availing exemption in the Notification are clearly specified therein and are exhaustive. The Exemption Notification is quite clear and leaves no ambiguity or doubt as to the conditions on fulfilment of which the implementing authority is empowered to issue a certificate. In other words, the authority empowered to issue certificate cannot travel beyond the four corners of the Notification. The scope of the exemption under Notification No.108/95 is restricted. Unless eligible for exemption in terms of the notification, a certificate by the implementing authority can be of no avail. The goods which do not qualify for exemption in terms of Notification No.108/95 cannot be held entitled to such exemption by mere issuance of a certificate by the implementing authority. There is force in the submission of Sri A.Rajasekhara Reddy, learned Senior Standing Counsel for Central Government that if the statutory notification is construed as permitting the implementing authority to prescribe its own conditions for exemption, it will be impermissible being beyond the scope of the powers conferred upon it. We, therefore, have to reject the submission on behalf of the petitioner that as power has been conferred upon high-ranking authorities to issue the certificates, it must be assumed that the conditions

specified in the Exemption Notification have been satisfied.

Any exemption provision in a statute or notification issued pursuant to the powers conferred under the statute would have the force of law and such a provision for exemption has to be construed strictly. A person invoking the exception or seeking exemption must establish that he is covered thereby. In the instant case, the petitioner has failed to establish that the condition precedent specified in the Exemption Notification has been satisfied. Once it is held, as it must be that the petitioner does not qualify for exemption under Notification No.108/95, the position in law becomes clear that a certificate issued in terms of para (c) (ii) by the implementing authority can be of no avail or assistance to the petitioner claiming exemption. The implementing authority (A.P. TRANSCO) is only empowered or authorised to issue a certificate, as already noticed, if the project being implementing is financed by an international organisation. A certificate in terms of para (c) (ii) by the implementing authority cannot by itself confer exemption as it is not the implementing authority that is empowered to grant exemption. The implementing authority is merely empowered to issue certificates certifying the facts to the extent specified in para (c) (ii). It is not the certificate by the implementing authority which confers the exemption, but the fulfilment of the conditions specified in the Exemption Notification which alone confers the eligibility to exemption in terms of para (c) of the Notification. As already held, the conditions specified in the Exemption Notification are not satisfied.

In the circumstances, it must be held that the certificates issued by A.P. TRANSCO were beyond its authority and *ultra vires* its powers.

As regards the action of A.P. TRANSCO cancelling the certificates as it did by the impugned letters, the contentions of the petitioners are: the doctrine of promissory estoppel is applicable to the facts of the case. There was no material to show existence of any overriding public interest to rule out the application of the said doctrine. There is no scope for retrospective withdrawal. In any event, before cancelling all the certificates, no opportunity of hearing was granted. The decision to cancel the certificates is not that of A.P. TRANSCO, but on the basis of certain intimation received from the Excise Department. The certificates issued have been acted upon even by the Excise authorities and the question is one of reimbursement of excise duty in terms of the deemed export benefits. As the excise duty now demanded is reimbursable to the petitioner, there is no bar for issuing a notification

declaring JBIC as international organisation. The provisions of the United Nations (Privileges and Immunities) Act, 1947 having been incorporated in the Exemption Notification by reference, by an executive action, such a declaration can be made. There is no unjust enrichment, in that, the petitioner has not collected excise duty. Lastly, reliance is placed upon the Full Bench judgment of this Court in **Panchalingal Carbonic Gas Pvt. Ltd., Kurnool v. State of A.P.**

On the other hand, it is the case of A.P.TRANSCO that there was no representation made to the petitioner with regard to exemption of excise duty on the goods supplied by it. Sri M. Sreeramulu Reddy, learned Standing Counsel for A.P. TRANSCO drew the attention of this Court to the clauses in the bidding documents which have been extracted in the earlier part of this judgment. Learned Standing Counsel reiterated that the certificates issued by A.P. TRANSCO were issued under a bona fide mistake and impression that JBIC is one of the recognised international organisations. Such certificates, it was contended, do not and cannot clothe the petitioner with any rights. The doctrine of promissory estoppel is not attracted because the certificates have been cancelled no sooner A.P. TRANSCO learnt of its mistake.

Sri A.Rajasekhara Reddy, learned Senior Standing Counsel for Central Government, on behalf of the other respondents, contended that the question of estoppel or promissory estoppel does not arise in the case on hand. The petitioner not being eligible for grant of exemption in terms of the Exemption Notification, cannot take the aid of promissory estoppel, much less, against the Central Government or the Excise authorities. The letter relied upon by the petitioner granting permission by the Excise authorities is one traceable to Rule 173 (b) of the Excise Rules. Pursuant to the self-removal procedure, there can be no estoppel against making assessment or collection of duties not paid or short-levied. Such power is to be found in Section 11A of the Central Excise Act. Reliance has been placed upon the judgment of the Calcutta High Court in **I.T.C. Limited v. U.O.I.**, wherein it was laid down that Section 11A of the Excise Act is not a machinery Section and it is a substantive provision and a complete code for realisation of excise duty in case of short-levy.

Estoppel, it is by now well settled, is a rule of equity. It is equally well settled by now

that even though a case may not fall within the terms of Section 115 of the Indian Evidence Act, 1872, which enacts the rule of estoppel, it would still be open to a person who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it. Though several precedents have been cited at the Bar, it would suffice here to refer to a recent judgment of the Supreme Court in **State of Punjab v. Nestle India Ltd.** relied upon by Sri Ravi, learned counsel for the petitioner. In that case, the law on the doctrine of the promissory estoppel has been recapitulated. The principal conditions for the operation of the doctrine have been stated, viz., – (I) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee; (2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.

In **Nestle India** case (supra), Justice Ruma Pal speaking for the Division Bench of the Supreme Court listed the 'strengths' and 'limitations' of the doctrine. As for the strengths, it was laid down that the Government is susceptible to the operation of the doctrine in whatever area or field the promise is made – "contractual, administrative or statutory". One of the 'limitations' of the said doctrine, which is relevant for the purpose of enquiry on hand and for that reason, the same needs to be extracted is as under:

> "No representation can be enforced which is prohibited by law in the sense that the person or authority making representation or promise must have the power to carry out the promise. If the power is there, then subject to the preconditions and limitations noted earlier, it must be exercised. Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax."

The contention of the petitioner on this aspect of the matter is that no one is being asked to act contrary to the statute. What is being sought is a direction to the Government to declare JBIC as international organisation. Consequently, the petitioner would be entitled to exemption and such grant would neither be contrary to any statute nor is there any bar in the statute to debar such grant of exemption. This contention overlooks a very significant aspect namely, Exemption Notification No.108/95 is issued by the Central Government and granting exemption from payment of excise duty is not within the province of the State of A.P. or A.P.

TRANSCO that issued the certificates. The very foundation of the petitioner's case insofar as the doctrine of promissory estoppel is concerned rests on the certificates issued by A.P. TRANSCO. It has already been held that A.P. TRANSCO had issued the certificates on a misconception and beyond its authority. In our view, therefore, equitable doctrine of promissory estoppel is not attracted. Neither A.P. TRANSCO nor the State of A.P. is competent to grant exemption from payment of excise duty in respect of the goods supplied by the petitioner. This is apart from the fact that equitable doctrine of promissory estoppel cannot be allowed to operate as to validate an *ultra vires* act or to override the clear words of the statute. We are further fortified in this view by the Division Bench judgment of this Court in **M. Devanarayana Reddy v. Government of A.P..** To attract the doctrine of promissory estoppel there should be a representation made by the Government, based on which the promisee has altered his position. In the case on hand, it is the bid documents which have to be looked into as to whether they contain any such representation made to the petitioner. It is based thereupon that the petitioner offered his bid. The certificates, made the foundation, for attracting the doctrine of promissory estoppel, are those issued subsequent to the award of the contract to the petitioner. At the time, the petitioner submitted his bid offering to supply the goods to A.P. TRANSCO, there was no representation that the goods are exempt from payment of excise duty. There is no such representation contained in the bid documents. Even in the purchase orders placed upon the petitioner by A.P. TRANSCO, it was clearly stipulated in paragraphs 2.1.1 and 2.2 that excise duty is not payable by A.P. TRANSCO. There is no representation made as to exemption from payment of excise duty with respect to the goods supplied to A.P. TRANSCO. It cannot, therefore, be said that the petitioner altered his position to his detriment on any representation made by A.P. TRANSCO to attract the doctrine of promissory estoppel. The certificates relied upon by the petitioner and issued by A.P. TRANSCO are matters subsequent to the award of contract in favour of the petitioner to supply the goods. It cannot, therefore, be said that there was any representation made prior to entering into contract with the petitioner by A.P.TRANSO as to the exemption of goods from excise duty.

The plea of promissory estoppel pressed against Excise authorities is misconceived. There is no material brought on record to establish that any promise was made by the Central Government or the Excise authorities with respect to the

exemption of goods supplied by the petitioner to A.P. TRANSCO. The letter of Excise Superintendent relied upon by the petitioner cannot be construed as such representation by the Excise authorities. We are inclined to uphold the contention of the learned Standing Counsel for Central Government that the principle of estoppel based on the letter dated 8-1-2001- Annexure P13 is not attracted. The letter granting such permission by the Excise authorities is traceable to Rule 173(b) of the Excise Rules. Unless the petitioner satisfies the condition precedent for grant of exemption specified in Notification No.108/95, the question of availing of exemption from payment of excise duty or additional excise duty in respect of the goods in question does not arise.

It was contended that the provisions of Section 3 of the United Nations (Privileges and Immunities) Act, 1947 have been incorporated in the Exemption Notification by reference. It was submitted that when an Act or certain of its provisions are incorporated by reference, the provisions so incorporated become part and parcel of that enactment as if they had been bodily transported into it. Based thereon, it was contended that there is no bar to issuing notification declaring JBIC as an international organisation. The basic premise on which the aforesaid contention is based is misconceived. There is nothing in the language of the Exemption Notification which incorporates the provisions of Act 46 of 1947 by reference or otherwise. No provision of the said Act 46 of 1947 has been incorporated as contended. It is only in the clause defining an international organisation that mention is made to that international organisation which has been so declared by the Central Government in pursuance of Section 3 of Act 46 of 1947. The definition clause in the Exemption Notification states that for the purpose of the notification international organisation means an organisation so declared by the Central Government in pursuance of Section 3 of Act 46 of 1947. There is nothing in the language of the said Notification which incorporates any provision of Act 46 of 1947. Neither Act 46 of 1947 or any provision thereof has been made applicable to the Exemption Notification so as to attract the principle of incorporation by reference. The clear intention of the Exemption Notification cannot be defeated by resort to the provisions of Act 46 of 1947 which have not been incorporated.

The petitioner having failed to establish its entitlement to the exemption in terms of the Exemption Notification, cannot press into effect the doctrine of

promissory estoppel against the Central Government or the Excise authorities.

The reliance of the petitioner upon the Full Bench judgment of this Court in **Panchalingal Carbonic Gas** case (supra) is misplaced. In that case, pursuant to the policy known as Target 2000, sales tax exemption incentives were provided. The petitioners, in that case, were granted eligibility certificate whereby sales tax exemption was available in terms of the Scheme for industries set up for manufacturing purposes. Based upon the eligibility certificates, sales tax exemption was availed of by the petitioners. However, when it was found that the eligibility certificates had been wrongly granted, as there was no manufacturing activity involved in the industry set up by the petitioners in that case, the eligibility certificates were cancelled. A Full Bench of this Court having upheld the contention of the State that the activity of the petitioners in that case did not involve the process of manufacture, the incentives in terms of the Scheme being thus not available to the petitioners, held that the doctrine of promissory estoppel was applicable, gave certain directions. The reasons for such directions are to be found in paragraphs 29 to 31 of the judgment viz., that under the Scheme as it stood, the petitioners were prohibited from collecting the tax during the validity of the eligibility certificates. It was found by the Court that it would be impermissible to compel those petitioners to pay tax which they did not collect. The liability to pay tax arising out of the cancellation of incentives, it was directed, would start from the date on which the orders of cancellation became effective. Similar directions, as was pleaded, cannot be issued in the case on hand. Therein, the matter was with respect to sales tax, a subject within the domain of the State of A.P. Pursuant to the policy framed by the State of A.P. (Target 2000 Scheme) being the representation held out by the State, eligibility certificates having been issued for availing of exemption from sales tax/deferment of tax, all such acts were within the province of the State of A.P. In the case on hand, as already noticed supra, the case is one relating to payment of excise duty within the province of the Central Government. There being no such representation made by the Central Government for granting exemption to the goods to be supplied to A.P. TRANSCO, save in the case specifically covered by the Exemption Notification No.108/95 issued in pursuance of Section 5A of the Central Excise Act.

Significantly, **Nestle India Ltd.** case (supra) turned upon the competence of the promossor to make the promise that it did. It was found in that case that the

Government had, by series of actions on its own part, made representations regarding the non-levy of purchase tax and that the respondents in that case had acted on the representations so made. The only question that arose for consideration in that case was as to the applicability of the principle of promissory estoppel when the relevant statute prescribes a particular mode for the grant of relief in respect of which the representation has been made. It was found that in terms of the Punjab General Sales Tax Act, 1948, being the relevant statute under consideration in that case, there was power to treat the goods otherwise leviable to tax under the Act as tax-free under Section 6(2). The State Government had the power under Section 31 to amend Schedule 'C' itself and thereby remove the goods from imposition of tax altogether. In addition, the promisor – State Government had the power to exempt the payment of tax under Section 30. It was held that a citizen may and can bind the Government to its promise if the factors necessary for founding a plea of promissory estoppel are established. Such is not the case on hand. As already held, there was no representation made, much less an unequivocal representation nor the State Government or A.P. TRANSCO is competent to make such representation or to carry out the same. The factors necessary for founding the plea of promissory estoppel are not established in the case on hand.

For the reasons afore-stated, it must be held that the action impugned in the instant writ petition suffers from no legal infirmity. The certificates issued by A.P. TRANSCO, on a misconception of its authority, have been corrected by cancelling the same. Admittedly, the condition precedent for issuing such certificates by A.P. TRANSCO in terms of Notification No.108/95 not having been satisfied, the question of applicability of principles of natural justice is also not attracted as it would be a futile exercise when admittedly JBIC is not a recognised international organisation.

In the result, the writ petition is liable to be and is accordingly dismissed.

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(M.H.S.ANSARI, J.)

7th March 2005.

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(T.Ch.SURYA RAO, J.)

ARS

To

1. The Chairman-cum-Managing Director, Transmission Corporation of Andhra Pradesh Limited, Vidyut Soudha, Hyderabad.
2. The Secretary, Government of India, Ministry of Commerce and Industry, Deparment of Commerce, Udyog Bhavan, New Delhi.
3.The Secretary, Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
4.The Chairman, Central Board of Excise & Customs,

North Block, New Delhi.

5.Two CD copies.